IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

RSA.No. 484 of 2007()

AS.83/2005 of PRINCIPAL SUB COURT,KOCHI
OS.527/2004 of .MUNSIFF COURT,KOCHI

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: APPELLANTS/RESPONDENTS/DEFENDANTS

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1. MRS. KOCHU RANI, AGED 53,
   W/O GREGORY JOSEPH, (APPACHAN KUNJU),
   KIZHAKKETHALACKAL, PUTHENANGADY P.O.,
   CHAMBAKULAM, ALEPPEY.

2. GREGORY JOSEPH @ APPACHAN KUNJU,
   AGED 57 YEARS, KIZHAKKETHALACKAL,
   PUTHENANGADY P.O., CHAMBAKULAM, ALEPPEY.

3. BEATINE JOSE, AGED ABOUT 24,
   S/O GREGORY JOSEPH, KIZHAKKETHALACKAL,
   PUTHENANGADY P.O., CHAMBAKULAM, ALEPPEY.

4. THOMAS A.D., AGED ABOUT 49,
   ALUMPARAMBIL HOUSE, CHOOLAPPADY,
   CHANGANASSERY, KOTTAYAM DISTRICT.

5. TRESA, AGED ABOUT 47, W/O THOMAS,
   RESIDING AT KIZHAKKETHALACKAL,
   PUTHENANGADY P.O., CHAMBAKALA, ALLEPPEY.

6. PROF. JAMES, AGED ABOUT 49,
   THOTHRAPPALLY HOUSE, THATHAMPALLY,
   ALLEPPEY NOW WORKING AT ST. MICHAEL'S COLLEGE,
   MAYATHARA P.O., CHERTHALA.

7. ELSAMMA ANTONY, AGED 45,
   W/O JAMES, INDIAN OVERSEAS BANK,
   EDATHUA BRANCH.

8. ANSAMMA ROSALIND, AGED ABOUT 40,
   GOVERNMENT HHSS, ANSHA,
   AMBALAPUZHA EAST, ALLEPPEY DISTRICT.

9. TOM ANTONY, AGED ABOUT 49,
S/O THOMAS ANTONY ROSALIND,
KOLLAMPARAMBIL HOUSE, THAYAMKARI P.O.,
EDATHUVA, NOW WORKING AT RPNW LTD.,
ANGUL RAILWAY WORKS, SIKSHEKPADA,
ANGUL P.O., PIN-79122, ORISSA.

BY ADV. SMT.K.GIRIJA

RESPONDENTS: APPELLANT/PLAINTIFF

K.J.PIOUS, AGED 46, S/O K.P.JOSEPH,
KAROT HOUSE, NAMBIAPURAM ROAD,
KOCHI-6.

BY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 25/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

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R.S.A. NO. 484 OF 2007

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Dated this the 25th day of July, 2007

JUDGMENT

Defendants in O.S.527/2004 on the file of Additional Munsiff Court, Kochi are the appellants. Plaintiff is the respondent. Respondent instituted the suit seeking a decree for permanent prohibitory injunction restraining respondents, the relatives of his wife from trespassing into the plaint schedule property or interfering with his peaceful enjoyment of the property. Appellants filed a written statement contending that wife of the appellant is residing in that house and appellants have no intention to trespass into the plaint schedule property and the suit was deliberately filed to portrait the wife as a mental patient and to prevent appellants from helping the wife and therefore respondent is not entitled to the decree sought for.

2. Learned Munsiff on the evidence found that

plaint schedule property belongs to the respondent and his wife is residing therein. It was also found that there was "moderate cause of action" for the suit without explaining what this moderate means. Learned Munsiff further found that respondent is not entitled to the decree for injunction as it would cause difficulty to the residence of the wife. Learned Munsiff found that if the decree is to be granted court will be instrumental in causing injustice to the liberty of the wife of the respondent. The suit was therefore dismissed. Appellant challenged the decree and judgment before Sub Court, Kochi in A.S.83/05. Learned Sub Judge on reappreciation of evidence found that the trial court should not have refused the decree for injunction sought for as possession was established and cause of action was also exists and granted a decree for injunction. It is challenged in the Second Appeal.

3. Learned counsel appearing for appellants was heard.

4. The argument of learned counsel is that first appellate court should not have interfered with the discretion exercised by the trial court especially when it is found that the result of granting the decree will be making the wife of the respondent secluded and in such circumstance, the decree is to be set aside.

5. On hearing learned counsel, I do not find any substantial question of law involved in the appeal.

6. The plaint schedule property admittedly belongs to the respondent absolutely. True, his wife is residing therein. It is clear that there is dispute between the respondent and his wife. The nature of the case projected before courts below establish that fact. The decree sought for was not against the wife. Appellants are her

relatives. They have no right in the plaint schedule property. They have no right to reside in the building also, along with the wife of the respondent. The decree granted by first appellate court is only restraining appellants from trespassing into the plaint schedule property or causing any obstruction to the enjoyment of the property by respondent. Appellants have no right either to trespass into plaint schedule property or to cause any obstruction to the enjoyment of the plaint schedule property by the appellant. Learned counsel then submitted that appellants have no intention to trespass or to cause any obstruction to the enjoyment of the property. Learned counsel submitted that by the decree their entry to the house is prohibited. True, entry of the appellants as trespassers is prohibited by the decree. But if the wife genuinely needs the assistance of any of the appellants, the decree

will not prevent them from going to the house for the assistance of the wife of the respondent.

As no substantial question of law is involved in the appeal , appeal is dismissed.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006